

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No 343 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
1 to 5 No.

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VIJAYBHAI V. PATEL

Versus

PATEL AUDIO ACTIVISTS LTD

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Appearance:

MR SUNIL M AGRAWAL for Petitioner  
NOTICE SERVED BY DS for Respondent No. 1

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CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 29/09/98

#### ORAL JUDGEMENT

The learned counsel for the petitioner tenders affidavit dated 24.9.1998 stating that the notice of the petition has been published in the official gazette dated 3.9.1998. A copy of the gazette has been produced alongwith the said affidavit which is taken on record.

2. The petitioner is a shareholder of the respondent-Company Patel Audio Activists Ltd. The petitioner's shareholding is of 8,500 equity shares of Rs. 10/= each. The petitioner had applied for

purchasing the shares of the respondent-Company from the promoter's quota in view of the representation held out that the Company proposed to come out with a public issue in the month of November, 1996 for setting up a project for recording studio and harddisk cassettes duplicating systems at an estimated cost of Rs. 550 lacs. The Company, however, did not come out with the public issue and dropped the project and also suspended all its activities. The petitioner, therefore, served a statutory notice dated 16.8.1997 upon the respondent-Company at its registered office pointing out that as per the record of Registrar of Companies, the respondent-Company had not held any annual general meeting of the shareholders nor had it made available the balance sheets for the years 31.3.1995 and 31.3.1996 to the shareholders. The petitioner had, therefore, informed the respondent-Company that the petitioner would invoke the jurisdiction of this Court under Section 433 of the Companies Act, 1956 for winding up of the respondent-Company if the respondent-Company failed to repay the amount of Rs.15,63,000/-.

3. In spite of service of notice of the petition, no one appeared for the respondent and, therefore, this Court was constrained to admit the petition and to pass an order for advertisements of the notice of the petition in "Sandesh" and "Indian Express". The said advertisements were published in "Sandesh" dated 18.2.1998 and "Indian Express" dated 19.2.1998. The notice of the petition was also published in the official gazette dated 3.9.1998.

4. In spite of admission of the petition and publication of the aforesaid notices in the daily newspapers and the official gazette, none appears for the respondent Company. In view of the fact that the respondent-Company has committed default in holding the statutory meetings of the shareholders and has also committed default in filing the balance sheets with the Registrar of Companies and also in view of the fact that the Company has not commenced its business within a year from its incorporation and has suspended its business for a whole year, the Company has rendered itself liable for being wound up under the provisions of clauses (b) and (c) of Section 433 of the Companies Act, 1956 and in the facts and circumstances of the case, it appears to the Court otherwise also that it is just and equitable that the Company should be wound up. The respondent-Company Patel Audio Activists Ltd. having its registered office at 202, Ratnadeep, Near High Court, Navrangpura, Ahmedabad is ordered to be wound up under the provisions

of Section 433 of the Companies Act, 1956.

5. The notices of this order of winding up shall be published in "Sandesh" and "Indian Express" both Ahmedabad editions and also in the official gazette. A certified copy of this order shall also be served upon the Registrar of Companies within 30 days.

6. The Official Liquidator is appointed as the Liquidator of Patel Audio Activists Ltd. in liquidation and shall take over possession of all the assets of the respondent-Company after making inventory at the earliest and shall exercise all the powers under the provisions of Section 457 of the Companies Act, 1956.

7. The petition is accordingly allowed.

Sd/-

September 29, 1998 (M.S. Shah, J.)